



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

August 21, 1996

Mr. Gary W. Smith  
City Attorney  
City of Greenville  
P.O. Box 1049  
Greenville, Texas 75403-1049

OR96-1522

Dear Mr. Smith:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 100533.

The City of Greenville (the "city") received seven requests for information related to two church fires that occurred in Greenville. You have identified several offense and arrest reports that are responsive to these requests. You intend to release edited copies of these reports to the requestors; however, you assert that the information you have redacted from these reports is excepted from disclosure pursuant to sections 552.101, 552.102, and 552.108 of the Government Code. You have submitted unedited copies of the reports to this office for review.

You contend that the following information in the offense and arrest reports is excepted from disclosure under section 552.108: (1) names, addresses, telephone numbers and other identifying information concerning witnesses, (2) witness statements, (3) records of property confiscated, (4) suspect statements, and (5) fingerprint information. Section 552.108 excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime," and "[a]n internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution." Gov't Code § 552.108; see *Holmes v. Morales*, 924 S.W.2d 920 (Tex. 1996). We note, however, that information normally found on the front page of an offense report is generally considered public. *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), writ *ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976); Open Records Decision No. 127 (1976). Thus, you must release the type of information that is considered to be front page offense report

information, even if this information is not actually located on the front page of the offense report. The city is using the five categories of information listed above to prosecute those suspected of setting fire to the Greenville churches. Section 552.108 of the Government Code provides that the city may withhold this information from required public disclosure, to the extent that it is not front page offense report information. On the other hand, you may choose to release all or part of the information that is not otherwise confidential by law. Gov't Code § 552.007.

Section 552.101 excepts "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Criminal history record information ("CHRI") generated by the National Crime Information Center ("NCIC") or by the Texas Crime Information Center ("TCIC") is confidential under federal and state law.<sup>1</sup> The reports at issue contain CHRI that is confidential by law. Thus, the city must withhold the CHRI from disclosure pursuant to section 552.101.

Section 552.101 also encompasses the doctrines of common-law and constitutional privacy. Common-law privacy protects information if (1) the information contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). The type of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. 540 S.W.2d at 683.

Constitutional privacy consists of two interrelated types of privacy: (1) the right to make certain kinds of decisions independently and (2) an individual's interest in avoiding disclosure of personal matters. Open Records Decision No. 455 (1987) at 4. The first type protects an individual's autonomy within "zones of privacy" which include matters related to marriage, procreation, contraception, family relationships, and child rearing and education. *Id.* The second type of constitutional privacy requires a balancing between the individual's privacy interests and the public's need to know information of

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<sup>1</sup>The dissemination of CHRI obtained from the NCIC network is limited by federal law. See 28 C.F.R. § 20.1; Open Records Decision No. 565 (1990) at 10-12. The federal regulations allow each state to follow its individual law with respect to CHRI it generates. Open Records Decision No. 565 (1990) at 10-12. Sections 411.083(b)(1) and 411.089(a) of the Government Code authorize a criminal justice agency to obtain CHRI; however, a criminal justice agency may not release the CHRI except to another criminal justice agency for a criminal justice purpose, Gov't Code § 411.089(b)(1). Thus, any CHRI generated by the federal government or another state may not be made available to the requestor except in accordance with federal regulations. Furthermore, any CHRI obtained from the Texas Department of Public Safety or any other criminal justice agency must be withheld as provided by Government Code chapter 411, subchapter F.

public concern. *Id.* The scope of information protected is narrower than that under the common-law doctrine of privacy; the information must concern the "most intimate aspects of human affairs." *Id.* at 5 (citing *Ramie v. City of Hedwig Village, Texas*, 765 F.2d 490 (5th Cir. 1985)).

This office has found that the following types of information are excepted from required public disclosure under constitutional or common-law privacy: some kinds of medical information or information indicating disabilities or specific illnesses, *see* Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps), personal financial information not relating to the financial transaction between an individual and a governmental body, *see* Open Records Decision Nos. 600 (1992), 545 (1990), information concerning the intimate relations between individuals and their family members, *see* Open Records Decision No. 470 (1987), and identities of victims of sexual abuse or the detailed description of sexual abuse, *see* Open Records Decision Nos. 440 (1986), 393 (1983), 339 (1982).

You contend that the medical information obtained from suspects during the booking process and recorded on the "Inmate Medical Record" form is protected from public disclosure by common-law and constitutional privacy. Having reviewed the medical information at issue, we conclude that some of this information is protected by common-law or constitutional privacy. We have marked a sample of the information to indicate the type of medical information that is excepted from disclosure under section 552.101.

Finally, you contend that the home address and home telephone number of a city employee are excepted from disclosure under section 552.102. This type of information is specifically excepted from disclosure under section 552.117 in connection with section 552.024. In pertinent part, section 552.117 excepts from disclosure the home addresses and telephone numbers of current or former officials or employees of a governmental body who request that this information be kept confidential under section 552.024. The city may not, however, withhold this information for a current or former official or employee who made a request for confidentiality under section 552.024 after the request for this information was made. Whether a particular piece of information is public must be determined at the time the request for it is made. Open Records Decision No. 530 (1989) at 5. You have submitted to this office information that demonstrates that the city employee elected to keep his or her home address and telephone number confidential prior to the date on which the city received the seven requests for information. Thus, section 552.117 excepts the city employee's home address and telephone number from disclosure, and the city must withhold this information on the city employee's behalf.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous

determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



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Open Records Division

KEH/ch

Ref.: ID# 100533

Enclosures: Submitted documents

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